

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET TV-091498
Carrier Classification of and Complaint)	
for Penalties against:)	ORDER 02
)	
BOUBACAR ZIDA, d/b/a ZIDA)	INITIAL ORDER CLASSIFYING
LABOR and/or ZIDA LABOR)	ACTIVITIES AS JURISDICTIONAL;
SERVICES)	REQUIRING RESPONDENT TO
)	CEASE AND DESIST FROM
)	JURISDICTIONAL ACTIVITIES
)	WITHOUT A PERMIT;
)	SUSPENDING PENALTIES
)	

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1 ***SYNOPSIS:*** *This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission (Commission) or allowed to become effective pursuant to the notice at the end of this Order. This Order determines that Boubacar Zida d/b/a Zida Labor and/or Zida Labor Services (Zida Labor or Company) has engaged and continues to engage in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. Zida Labor is required to cease and desist from engaging in such business, without authority granted by the Commission. This Order finds 11 distinct violations of RCW 81.80.075, supporting a penalty assessment of \$5,000 for each violation, or \$55,000 in total. Because Zida Labor has applied for, and the Commission has granted, a temporary permit allowing the Company to operate as a household goods carrier, this Order recommends the Commission suspend the effect of these penalties for one year, on condition that the Company maintains its permit in good standing, including maintaining the required insurance.*

SUMMARY

2 **NATURE OF PROCEEDING.** Docket TV-091498 involves a proceeding to determine whether Boubacar Zida d/b/a Zida Labor and/or Zida Labor Services (Zida Labor or Company) should be classified as a household goods carrier subject to

regulation under RCW 81.80 and whether the Washington Utilities and Transportation Commission (Commission) should impose penalties against the Company for advertising to provide household goods moving services without the authority required under RCW 81.80.075.

3 **APPEARANCES.** Boubacar Zida, owner, Zida Labor, Lynwood, Washington, and Gina Brown, Bothell, Washington, appeared *pro se* for the Company. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, appeared for the Commission's Regulatory Staff.¹

4 **PROCEDURAL HISTORY.** On December 17, 2009, pursuant to RCW 81.04.510, the Commission entered Order 01 in this proceeding instituting a special proceeding on its own motion, to determine whether Zida Labor is engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. Order 01 also included the Commission's complaint against Zida Labor seeking to impose penalties for violations of RCW 81.80.075, which prohibits advertising for moving services without authority. Together with Order 01, the Commission issued a *subpoena* and *subpoena duces tecum* in the proceeding, ordering Mr. Zida and Zida Labor to appear at the scheduled hearing and bring documents related to any moving services provided since July 26, 2009.

5 On January 15, 2010, the Commission conducted a duly noticed hearing in this docket. Mr. Zida appeared together with Gina Brown, his sister-in-law. Ms. Brown testified at the hearing for Zida Labor and brought documents responsive to the *subpoena duces tecum*. Sheri Hoyt, a Compliance Investigator for the Commission, testified on behalf of Commission Staff.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

- 6 On January 25, 2010, Zida Labor filed an application with the Commission for a household goods carrier permit.² Staff filed a letter with the Commission on February 3, 2010, stating that due to a delay Zida Labor is experiencing obtaining cargo insurance, Commission Staff has agreed to extend the deadline for filing a complete application to Friday, February 5, 2010. On Friday, February 5, 2009, the Company met the requirement by submitting proof of cargo insurance.
- 7 The Commission granted the application and issued temporary authority to Zida Labor on February 9, 2010, in Docket TV-100142.
- 8 **DETERMINATION.** The Commission determines on the basis of the evidence presented at hearing that Zida Labor is, and has been, engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. The Commission concludes it is appropriate to order Zida Labor to cease and desist from this activity pursuant to RCW 81.04.510. In addition, the Commission determines that Zida Labor should be penalized in the amount of \$5,000 for each of 11 violations of RCW 81.80.075 for advertising without required authority, for a total penalty of \$55,000. Given Zida Labor's stated intent to comply with requirements governing household goods carriers and recent efforts to obtain a permit from the Commission to provide services, the penalties are suspended on condition that Zida Labor maintains an active household goods carrier permit for one year from the effective date of this Order, including maintaining the necessary insurance.³

MEMORANDUM

A. Statutory Authority

- 9 Under RCW 81.80, the definition of "household goods carrier" includes a person who "advertises, solicits, offers, or enters into an agreement to transport household goods"

² The information in paragraphs 6 and 7 of this Order is posted on the Commission's Records Management System, and is publicly available on the Commission's Web site. The Commission takes official notice of these facts under WAC 480-07-495(2).

³ If no party seeks administrative review of this Initial Order, the effective date of this Order will be the date the Commission issues a Notice of Finality in this docket., which would be 21 days following the date of this Order, or March 1, 2010.

within the state of Washington.⁴ The term “person” can mean a firm as well as an individual. Household goods carriers are common carriers. For the purposes of Title 81 RCW, every common carrier is a public service company.⁵ The Commission has jurisdiction to institute a special proceeding to determine whether a company or individual is conducting business as an intrastate mover of household goods requiring operating authority from the Commission, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.80.070 and RCW 81.04.510. The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission, pursuant to RCW 81.04.110.

- 10 It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. Under RCW 81.80.075(4), any person who engages in such business without the required permit is subject to a penalty of up to five thousand dollars per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.
- 11 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier’s willingness to comply with the requirements of RCW 81.80.070 and the Commission’s household goods carrier rules; and (2) the carrier’s history of compliance with the provisions of RCW 81.80.075.⁶
- 12 In this proceeding, the Commission must determine:
1. Whether Zida Labor is engaging or has engaged in business as a household goods carrier in the state of Washington without the required permit; and

⁴ RCW 81.80.010(5).

⁵ See RCW 81.04.010(1) and (16); *see also* RCW 81.80.010.

⁶ See RCW 81.80.075(4)(b).

2. If it determines Zida Labor has engaged in jurisdictional activities without legal authority, whether to order the Company to cease and desist from such activities, whether to assess penalties against the Company and, if so, in what amount.

B. Background and Evidence

- 13 Zida Labor previously held Commission authority to provide household goods moving services: The Commission granted Zida Labor provisional authority - temporary permit THG-63175, on March 4, 2008.⁷ On October 2, 2008, in Docket TV-081757, the Commission suspended Zida Labor's temporary permit for failure to maintain proof of liability and property damage insurance.⁸ The Commission cancelled the Company's permit on November 4, 2008, as the Company failed to file proof of insurance before the end of the 30-day suspension period.⁹ On that same day, Mr. Zida attended a mandatory training session at the Commission for new entrant household goods movers.¹⁰ Zida Labor has not applied for, and does not hold, any type of Commission authority, including a household goods carrier permit.¹¹
- 14 In November 2008, while reviewing seattle.craigslist.org (Craigslist) for advertisements by non-permitted household goods movers, Ms. Hoyt found an advertisement for Zida Labor for moving and furniture delivery services.¹² Ms. Hoyt began an investigation concerning Zida Labor, documenting her investigation in a declaration.¹³

⁷ Exh. No. 2, at 1, ¶ 3.

⁸ *Id.*, see also Exh. No. 1.

⁹ Exh. No. 2, at 1, ¶ 3.

¹⁰ *Id.*

¹¹ Hoyt, TR. 17:10-17; 16:14-16.

¹² Exh. No. 2 at 1, ¶ 2.

¹³ Hoyt, TR. 17:18-21, see also Exh. No. 2.

- 15 Ms. Hoyt contacted Mr. Zida by telephone on December 1, 2008. During the conversation, Mr. Zida stated that he had again secured insurance, and Ms. Hoyt explained that he would have to submit a new application and pay the application fee again before the Commission would issue a permit. Mr. Zida provided Ms. Hoyt with a mailing address so the Commission could mail him an application.¹⁴
- 16 After confirming with staff in the Commission's Licensing Section that Mr. Zida had not submitted an application or proof of insurance, Ms. Hoyt again contacted Mr. Zida by telephone on January 9, 2009.¹⁵ Ms. Hoyt reminded Mr. Zida of their conversation on December 1, and reminded him that he cannot perform such moves without a Commission permit. Mr. Zida confirmed that he was still performing household goods moves, and claimed he had sent an application on December 27, 2008, and had asked that a Form E from his insurance company be faxed to the Commission. He claimed he did not know that operating without a permit was illegal.
- 17 Later that same day, Ms. Brown contacted Ms. Hoyt to determine what form needed to be completed.¹⁶ Ms. Brown did not understand why an application needed to be submitted again. After explaining that the Company's permit had been cancelled for failure to maintain insurance, Ms. Hoyt explained the requirements that the Company file a new application with support statements, insurance form and the application fee.
- 18 After locating an advertisement for Zida Labor on Craigslist on March 20, 2009, Ms. Hoyt again contacted Mr. Zida to ask why he was still advertising as a household goods carrier without a permit. Ms. Hoyt reminded Mr. Zida of the requirement that he could only operate with a permit, and that if he is granted a permit his rates must be consistent with the tariff. Mr. Zida responded that he did not understand the tariff and rules and wanted training about them. Mr. Zida responded that he would file an application by March 27, 2009.
- 19 On July 15, 2009, the Commission sent a letter to Mr. Zida informing him of a new law that would become effective on July 26, 2009, and would allow the Commission

¹⁴ Exh. No. 2 at 2, ¶ 4.

¹⁵ *Id.*, ¶ 5.

¹⁶ *Id.*, ¶ 6.

to pursue enforcement actions against non-permitted carriers based only on proof of advertising.¹⁷ The letter also invited the Company to avoid enforcement action by filing an application prior to August 15, 2009.

20 After July 26, 2009, the effective date of the new law, Ms. Hoyt determined that Zida Labor continued to advertise for household goods moving services on its own Web site, Craigslist and other Internet sites, without a Commission permit.¹⁸ In addition to advertisements for services on the Company's Web site, her investigation identified nine separate advertisements on Craigslist, and one on www.umovers.com.¹⁹ These advertisements clearly offered household goods moving services:

- Seattle's Best Movers – No Move too Big or Small! (Seattle Area +)²⁰
- Zida Labor provides skilled and reliable movers to get your job done.
Moving services are our specialty²¹
- Our services include: Moving Services ...²²
- *Professional Movers * Done Right, On Time! * CALL TODAY!
(Serving King, Snohomish, and Pierce)²³

21 After completing her investigation and declaration on October 5, 2009, and in preparation for the hearing, Ms. Hoyt checked the Company's Web site on January 11, 2010, and found it continued to advertise for household goods moving services.²⁴

¹⁷ Exh. No. 2, at 3, 11-12, ¶ 10 (Att. C). The new law - Laws of 2009, c.94 – is codified in RCW 81.80.010, RCW 81.80.040, RCW 81.80.070, RCW 81.80.075, RCW 81.80.280, RCW 81.80.357, and RCW 81.80.372

¹⁸ Exh. No. 2 at 4-6, 13-37 (Atts. D-H).

¹⁹ *Id.*; see also Cameron-Rulkowski, TR. 27:2-4.

²⁰ Exh. No. 2 at 13 (Craigslist - Att. D).

²¹ *Id.*, at 16 (Company Web site - Att. E).

²² *Id.*, at 23 (www.umovers.com - Att. F).

²³ *Id.*, at 37 (Craigslist - Att. H).

²⁴ Hoyt, TR. 18:24 – 19:6; see also Exh. No. 3.

- 22 At hearing, Ms. Brown claimed that some of the Internet advertisements are pulled from Craigslist and other places, but admitted that she posted the Craigslist and www.umovers.com advertisements.²⁵ Mr. Zida began operating as a mover in November 2007, and used to be fully licensed and insured.²⁶ The Company lost its permit during the slow months of November and December 2008 and has not had sufficient funds to pay for insurance.²⁷
- 23 At the conclusion of the hearing, Commission Staff recommended that the Commission classify Zida Labor as a household goods carrier and enter an order requiring the Company to cease and desist from continued operations without a permit.²⁸ Staff also requested that the Commission impose the maximum penalty of \$5,000 for each violation of RCW 81.80.075 for engaging in business as a household goods carrier without a permit.²⁹ Noting evidence of 11 violations – a Web site, nine Craigslist advertisements, and one www.umovers.com advertisement – Staff requests total penalties of \$55,000. However, Staff recommends the Commission suspend the penalties for one year, on the condition that Zida Labor completes an application for a permit with the necessary insurance by January 22, 2010, at 5:00 p.m., and that the Company maintains the necessary insurance and an active permit, *i.e.*, not lose the permit or insurance, for one year.³⁰ Staff extended the date for completing an application to the close of business, Friday, February 5, 2010.³¹

²⁵ Brown, TR. 9:11-19; 13:6-20; 14:7-11.

²⁶ *Id.*, TR. 10:1-14.

²⁷ *Id.*, TR. 11:15 – 12:8.

²⁸ Cameron-Rulkowski, TR. 26:14-23.

²⁹ *Id.*, TR. 26:24 – 27:14.

³⁰ *Id.*, TR. 40:3-13, 18-25.

³¹ By letter dated February 3, 2010, Staff notified the Commission that it had extended the deadline for Zida Labor to file a complete application from January 22, 2010, to February 5, 2010.

- 24 Mr. Zida agreed to these conditions. While Mr. Zida's "intentions were to become reauthorized, repermited in the near future" and this is a "rough time," the Company is willing to come into compliance sooner.³²
- 25 Following the hearing, Mr. Zida met Staff's first condition for suspended penalties by filing a completed application with the Commission by the close of business on February 5, 2010. The Commission issued the Company a temporary permit, THG-63826, in Docket TV-100148 on February 9, 2010.

C. Discussion and Determinations

- 26 There is no dispute based on the evidence in this proceeding that Mr. Zida and Zida Labor have operated as a household goods carrier in the state of Washington since November 2008, and continue to operate, without a household goods permit in violation of RCW 81.80.075. Since the Commission cancelled the Company's temporary permit in November 2008, the Commission has not granted Zida Labor a household goods carrier permit. Staff has documented, and Zida Labor admits, that the Company has advertised to provide household goods moving services since July 26, 2009. As a result, Zida Labor meets the definition of a household goods carrier under RCW 81.80.010(5). Based on these findings and the Commission's authority under RCW 81.04.510, Zida Labor should be classified as a household goods carrier subject to the provisions of Title 81 RCW, and the Commission should enter an order directing Zida Labor to cease and desist operations as a household goods carrier in the state of Washington without a permit.
- 27 In addition to determining that Zida Labor either conduct its business in accordance with the law or not at all, the Commission determines further that it should penalize the Company for its unlawful activities. Staff has brought forth evidence of 11 violations of RCW 81.80.075, each of which carries a potential penalty of up to \$5,000. Considering Zida Labor's history of non-compliance, its knowledge of the requirements under state law and its failure to take seriously its obligations under the law until the Commission filed the complaint in this proceeding, the Commission determines it should assess the maximum total penalty of \$55,000. However, given

³² Brown, TR. 29:7-12.

the Company's recent efforts to bring itself into compliance, including completing a permit application and providing proof of insurance, it is appropriate to grant Staff's request to suspend imposition of the penalty for one full year from the effective date of this Order, on condition that the Company maintain an active permit and the insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, for that year. By suspending the penalties, the Commission does not condone Mr. Zida's or Zida Labor's prior non-compliance, but seeks to encourage continued compliance now that Zida Labor has obtained a household goods permit.

- 28 At the end of one calendar year from the effective date of this Order, Commission Staff shall notify the Commission in this Docket whether Zida Labor continues to maintain an active permit. If so, the suspended penalties shall be cancelled. If Commission Staff becomes aware at any time during the one year period that the Company is no longer maintaining an active permit, including maintaining the required insurance, Staff shall notify the Commission in this Docket and the Commission will issue an order imposing the full penalty amount of \$55,000.³³

FINDINGS OF FACT

- 29 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 30 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.

³³ Of course, Zida Labor is required to continue to maintain its active permit and the required insurance *after* the one year period if the Company continues performing household goods moves in Washington. The one year period discussed herein is in the context of the Commission's suspension of the penalties and does not alter the statutory and regulatory requirements that apply to Zida Labor and all other common carriers.

- 31 (2) Boubacar Zida d/b/a Zida Labor and/or Zida Labor Services is registered to do
business in the state of Washington. Zida Labor has engaged and continues to
engage in business as a household goods carrier within the state of Washington
without the authority required by RCW 81.80.070 and RCW 81.80.075.
- 32 (3) Zida Labor has advertised to provide household goods moving services on its
Web site www.zidalaborservices.com, on Craigslist, and on other Internet
Web sites on at least 11 instances since July 26, 2009.
- 33 (4) The Commission has notified Zida Labor by letter and several other times by
telephone of the statutory requirement that the Company may only provide
household goods moving services or advertise for such services if the
Commission has granted it a household goods carrier permit.
- 34 (5) Zida Labor filed a completed application for a household goods permit with
the Commission on February 5, 2010, and the Commission granted the
Company a temporary permit on February 9, 2010.

CONCLUSIONS OF LAW

- 35 Having discussed above all matters material to this decision, and having stated
detailed findings, conclusions, and the reasons therefore, the Commission now makes
the following summary conclusions of law, incorporating by reference pertinent
portions of the preceding detailed conclusions:
- 36 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, these proceedings.
- 37 (2) Zida Labor is engaged in business as a household goods carrier within the state
of Washington without the authority required by RCW 81.80.070 and RCW
81.80.075.
- 38 (3) Zida Labor should be ordered pursuant to RCW 80.04.510 to cease and desist
from engaging in business as a household goods carrier within the state of
Washington without the authority required by RCW 81.80.070 and RCW
81.80.075.

- 39 (4) Zida Labor's advertisement on the Company's Internet Web site on September 22, 2009, to provide household goods moving services constitutes one violation of RCW 81.80.075. The Commission should assess the maximum penalty for this violation, \$5,000.
- 40 (5) Zida Labor's advertisements on Craigslist three times on September 17, 2009, once on September 19, twice on September 21, 2009, once on September 22, 2009, and twice on September 23, 2009, to provide household goods moving services constitute nine violations of RCW 81.80.075. The Commission should assess the maximum penalty for each of these nine violations, \$5,000, for a total of \$45,000.
- 41 (6) Zida Labor's advertisement on www.umovers.com on September 22, 2009, to provide household goods moving services constitutes one violation of RCW 81.80.075. The Commission should assess the maximum penalty for this violation, \$5,000.
- 42 (7) Zida Labor's efforts to come into compliance with the requirements for household goods carriers by filing a permit application, obtaining the necessary insurance and obtaining a valid permit support mitigating the effect of penalties for noncompliance by suspending the penalties on the condition that the Company maintain the necessary insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, and maintain its Commission authority for one calendar year after the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 43 (1) Boubacar Zida d/b/a Zida Labor and/or Zida Labor Services is required, pursuant to RCW 80.04.510, to cease and desist from engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.

- 44 (2) It is appropriate to assess penalties against Zida Labor in the total amount of \$55,000 for 11 violations of RCW 81.80.075, each of which carries a maximum penalty of \$5,000. The full penalty amount of \$55,000 is suspended for one calendar year from the effective date of this Order, on the condition that Zida Labor maintains the necessary insurance required under RCW 81.80.190, WAC 480-15-530 and WAC 480-15-550, and that the Company maintain its permit for the full calendar year. If this condition is not met, Staff shall notify the Commission in this Docket and the Commission will issue an order imposing the full penalty amount of \$55,000.
- 45 (3) The Commission retains jurisdiction to enforce this Order.

DATED at Olympia, Washington, and effective February 9, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

In addition, WAC 480-07-450(2) provides that a party who is found in default may contest the order of default by filing a written motion with the Commission within ten days after service of the Final Order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S Evergreen Park Drive, SW
Olympia, WA 98504-7250